(c) DoD Components shall coordinate with the DDR&E on all matters concerning the functions in § 351.3.

§ 351.5 Authorities.

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the USD(A), and in accordance with DoD policies, Directives, and Instructions, the DDR&E or, in the absence of the DDR&E, the person acting for the DDR&E, is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda that carry out policies approved by the Secretary of Defense in assigned fields of responsibility, consistent with DoD 5025.1–M. Instructions to the Military Departments shall be issued through the Secretaries of those Departments or their designees. Instructions to Unified and Specified Commands shall be issued through the Chairman of the Joint Chiefs of Staff (CJCS).

(b) Obtain such reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 7750.5 [2], as the DDR&E deems necessary.

(c) Communicate directly with heads of DoD Components. Communications with the Unified and Specified Commands shall be coordinated through the CJCS.

(d) Establish arrangements for DoD participation in those nondefense governmental programs for which the DDR&E has been assigned primary cognizance.

(e) Approve, modify, or disapprove R&D, and projects of the Military Departments and other DoD Agencies in assigned fields.

(f) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(g) Make determinations and decisions regarding scientific and technical matters, basic and applied research, and the development of weapon systems.

(h) Make the determination required by Title 50, United States Code, section 1512(1), concerning transportation or testing of any lethal chemical or any biological warfare agent.

(i) Submit the annual report to Congress on funds obligated in the chemical warfare and biological defense research programs required by Title 50, United States Code, section 1511.

[2] See footnote 1 to 5351.3(d).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 26, 1989.

[FR Doc. 89–2248 Filed 2–3–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 173 and 174

[CGD 82–015]

RIN 2115–AA82

Casualty and Accident Reporting; Accident Report Threshold

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is raising the reporting requirement threshold to $500 for vessel accidents involving only property damage. Because of inflation since 1979, the existing $200 threshold has resulted in the submission of increasing numbers of accident reports for minor incidents. These reports tend to distort the statistical base for the Boating Safety Program. These additional accident reports, which were not required to be submitted in 1979, have also increased the administrative burden on the Coast Guard and the reporting burden on the boating public. Raising the accident reporting threshold to $500 will compensate for the effects of inflation, provide for a consistent statistical base and reduce the administrative burden on the Coast Guard and the reporting burden on the boating public. State casualty reporting systems may continue to require submission of accident reports at a lower threshold than that required by the Coast Guard.

EFFECTIVE DATE: March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Office of Navigation Safety and Waterway Services (G–NAB), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–0979, between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Sections 173.55 and 174.101 of Title 33 Code of Federal Regulations, require boaters to submit a casualty or accident report for accidents involving fatalities, injuries requiring medical treatment beyond first aid, property damage more than $200, or complete loss of vessel. This casualty reporting system has helped to achieve uniform reporting of boating accident information and has provided a statistical base to evaluate the need for safety standards and to help analyze program effectiveness.

In 1972 the original reporting threshold for vessel accidents resulting in only property damage was $100. In 1979, the effects of inflation on the original figure required that the reporting threshold be raised to $200. This adjustment served to correct the distortion on the year to year data in the statistical base and also reduced the number of reports required to be filed. Although no other adjustments have been made since 1979, inflation has increased the cost of minor repairs to the point that previously nonreportable minor damage now exceeds the threshold figure. The resulting reports on these minor repairs tend to distort the year to year comparability of the statistical data base on boating accidents.

The Coast Guard issued a notice of proposed rulemaking on April 25, 1988, (53 FR 13417) proposing to raise the accident reporting threshold to $400 for 1989 to compensate for the effects of inflationary increases in repair costs. The original comment period was extended to July 25, 1988, by a notice issued in the **Federal Register** on July 10, 1988.

Any reporting threshold figure will, over time, require some adjustment. The Coast Guard plans to review the reporting threshold annually, applying the Gross National Product (GNP) deflator published by the Department of Commerce. When, during an annual review, it is determined that an adjustment of the reporting threshold figure is appropriate, the Coast Guard will initiate rulemaking to raise the threshold in $100 increments.

Applying the GNP deflator to the original $100 threshold published in 1972, and rounding to the nearest hundred dollars, yielded equivalent reporting threshold figures of $200 for 1978, $300 for 1981, $400 for 1985 and $500 for 1990 (projected). Although the GNP index formula does not justify a $500 threshold until 1990, establishing the higher threshold now would eliminate the need to initiate another rulemaking project soon after establishing a $400 threshold. The $500 threshold amount will skew the data base only slightly (4%) until inflation catches up. The Coast Guard considers this slight distorting effect on the data base to be within acceptable limits until inflation catches up to the early adjustment. The Coast Guard is, therefore, adjusting the reporting

threshold to compensate for the effects of inflation, by raising the threshold figure to $500.

Drafting Information: The principal persons involved in drafting this rulemaking are Carlton Perry, Project Manager and Christena Green, Project Attorney.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Discussion of Comments: A total of 30 comments were received in response to the NPRM by the close of the extended comment period. One comment received on July 26 has also been considered in this rulemaking. The comments came from the following groups in the numbers noted:

11 Recreational Boaters
3 Marine Surveyors
3 Boating Insurance Companies
8 State Boating Law Administrators
2 Local Boating Law Enforcement
1 National Boating Interest
3 Individual Interests

In addition to proposing the increased accident reporting threshold in the NPRM, the Coast Guard asked a number of specific questions related to raising the appropriate level of reporting threshold; basing reporting requirements on types of damage instead of dollar amounts; impacts of receiving less information or data if the reporting threshold were raised above $400; and what measures could be taken to improve boater compliance with accident reporting requirements. A summary of the responses to each question in the NPRM is set out below:

Question 1. Should the reporting threshold be raised to $400 now for CY 1989, to preserve a comparable data base, and be raised to $500 for CY 1990 to maintain the data base, if still supported by the indexing formula?

Six comments opposed raising the reporting threshold to $400. Two commenters felt the increase would cause a sudden drop in the number of accidents required to be reported and that valuable information would be lost. Two comments suggested that the present threshold was similar to that for motor vehicles and would ensure collection of information which could identify the causes of accidents. Seven comments supported raising the reporting threshold to $400. One commenter supported the proposal to allow the states to retain a lower reporting threshold, and one commenter suggested requiring boaters to report all accidents, but have the states forward to the Coast Guard only reports of damage over $400.

Question 2. Should the reporting threshold be raised to $500 now for CY 1989, to avoid repeating the regulatory process for CY 1990?

Three comments supported raising the reporting threshold to $500 now because the cost to repair very minor damages generally exceeds $500 and the increased threshold would save paperwork expense immediately. The National Association of State Boating Law Administrators also recommended allowing states to use a lower reporting threshold if they wish.

Question 3. Should the reporting threshold be set at some higher level between $600 and $1,000, establishing a new base on which to apply the indexing formula?

Four comments favored a reporting threshold over $500, at levels ranging from $600, to $3,000. One commenter suggested $1,000 to $1,500 because many insurance deductibles are $1,000 or more and people will report damage to an insurance company before reporting it to the Coast Guard. One suggested $2,000 to reduce the volume of reported accidents. Another believed $3,000 would result in more reportable accidents actually being reported.

Question 4. Should the reporting dollar threshold be replaced by the specific types of damage which must be reported, regardless of dollar value of the property damage?

Two comments suggested requiring reports on specific types of accidents instead of using a dollar reporting threshold. Both commenters suggested requiring reports on collisions with other vessels and fixed objects. One also listed falls overboard, capsizings, swampings, sinkings, struck by boat or propeller, fire and/or explosions, and property damage exceeding $500 for all other accidents, because these types of accidents need to be better analyzed to reduce fatalities and injuries.

Question 5. For what purposes are the Coast Guard statistics on recreational boating property damage used?

No comment addressed this question.

Question 6. What impacts, if any, would result from the loss of information, if a reporting threshold above $400 were established?

One comment stated there would be no impact because records of insurance companies could be examined, if necessary, to check on statistics on accidents lower than the reporting threshold.

Discussion of Rulemaking

The Coast Guard has decided to raise the accident reporting threshold to $500. The Coast Guard intends to conduct an annual review of the reporting threshold and raise the reporting threshold in $100 increments when appropriate, to keep reporting data comparable from year to year and avoid a "sudden drop" in data.

This rulemaking does not require the states to raise their reporting thresholds or change their reporting procedures. States may set or keep a lower reporting threshold, if appropriate for their state.

The Coast Guard does not find an adequate basis to substitute categories of accidents for the dollar threshold amount. The Coast Guard also decided not to raise the reporting threshold to $600, or greater, for 1989 because it would create a new data base excluding a segment of accident reports which have been part of our data base since the reporting system was established in 1972. These reports are used in determining the need to establish or change electrical, fuel and ventilation standards for recreational boats. Raising the dollar amount of the reporting threshold to $500 will adequately exclude accident reports of cosmetic or minor damage which are of little statistical value in the accident reporting data base, while continuing to require reporting of accidents equivalent to those required in 1972. The consequent reduction in the number of required reports will relieve the burden on the boating public and on the Coast Guard of processing reports which are not essential to the accident reporting data base.

Discussion of Improving Boater Compliance in Reporting Accidents

The notice of proposed rulemaking also requested public comment on any measures that could be taken to improve boaters' compliance with requirements for reporting property damage. Twenty comments discussed this issue. Five of the comments suggested improving public relations or boater education on reporting requirements, two emphasizing Coast Guard Auxiliary education and one urging mandatory boater education or licensing. Three suggested insurance companies could provide accident reporting forms, and two suggested an insurance claim not be paid until a report is filed. One suggested that insurance companies report to the Coast Guard all claims over $400, and one suggested requiring marine repair shops to file a report if they make any repairs to boat damage exceeding $400. Four commenters emphasized a need for

better access to forms, one suggesting that states mail forms with boat registration information. Two urged simplifying the reports and reporting procedures.

The Coast Guard is working with the states to improve access to accident reporting forms and requirements, to increase efforts in boater education and public relations, and to provide accident reporting forms and reporting requirements to boating insurance companies. The Coast Guard will continue to review these and any additional suggestions, and, where appropriate, initiate rulemaking or develop nonregulatory measures to improve boater compliance with accident reporting requirements.

The National Boating Safety Advisory Council and the National Association of State Boating Law Administrators have been consulted and their opinions and advice have been considered in the formulation of this rule. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this rule was discussed are available for examination in Room 4306, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G–NAB), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

Regulatory Evaluation

This rulemaking is considered nonmajor under Executive Order No. 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). This amendment is being made to adjust accident reporting criterion and does not reflect interpretations of statutory language. The Coast Guard collects and analyzes accident data on a calendar year basis and the intent of this rulemaking is to keep accident data comparable from year to year. The effect of the rulemaking is to reduce the number of reports being submitted for accidents of decreasing seriousness due to economic inflation. Raising the reporting criterion from "more than $200" to "more than $500" will reduce the number of reports presently required because minor cosmetic damage repair costs exceed the reporting threshold. The adequacy of this alternative and method of annual application of GNP deflators to the reporting threshold will be reconsidered during a review of all Coast Guard recreational boating safety regulations scheduled for May 1991. For reasons, the economic impact of the rulemaking has been found to be so minimal that further evaluation is unnecessary. Since the impact of the rulemaking is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Parts 173 and 174

Marine safety, Reporting requirements.

In consideration of the foregoing, the Coast Guard is amending Parts 173 and 174 of Title 33, Code of Federal Regulations to read as follows:

PART 173—[AMENDED]

1. The authority for Part 173 is revised to read as follows:

Authority: 46 U.S.C. 6101, 12302; 49 CFR 1.46.

2. Section 173.55 is amended by revising paragraph (a)(3) to read as follows:

§ 173.55 Report of casualty or accident.

(a) * * *

(3) Damage to the vessel and other property totals more than $500 or there is a complete loss of the vessel; or

* * * * *

PART 174—[AMENDED]

3. The authority for Part 174 is revised to read as follows:

Authority: 46 U.S.C. 6101, 12302; 49 CFR 1.46.

4. Section 174.101 is amended by revising paragraph (b) to read as follows:

§ 174.101 Applicability of State casualty reporting system.

* * * * *

(b) The State casualty reporting system may also require vessel casualty or accident reports for property damage in amounts less than that required under § 173.55 of this chapter.

* * * * *

Dated: February 1, 1989.

R.T. Nelson

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR. Doc. 89–2712 Filed 2–3–89; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Parts 2, 3, 14, and 19

General Counsel Opinions

AGENCY: Veterans Administration.

ACTION: Final rules.

SUMMARY: The Veterans Administration (VA) is issuing final regulatory amendments governing legal opinions of the VA General Counsel. These amendments include delegation of authority to the General Counsel to designate certain legal opinions involving veterans' benefits under laws administered by the VA as precedential. The amendments also authorize the General Counsel to issue legal opinions involving veterans' benefits under laws administered by the VA which are binding on Agency officials with respect to the matter at issue, but not precedential. Opinions of this type which are designated as "advisory only" will not have such binding effect. The regulatory action is intended to assist VA officials, benefit claimants and claimants' representatives by defining the status and effect of particular classes of General Counsel opinions.

EFFECTIVE DATE: These rules are effective March 8, 1989.

FOR FURTHER INFORMATION CONTACT: Andrew J. Mullen, Deputy Assistant General Counsel, Office of the General Counsel, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2440.

SUPPLEMENTARY INFORMATION: On March 15, 1988, the VA published in the **Federal Register** (53 FR 8471) a notice proposing amendment of Parts 2, 3, and 14 of Title 38, Code of Federal Regulations, to define the status and effect of certain legal opinions of the General Counsel. The VA proposed adding a specific delegation of authority in Part 2 of Title 38 under which the General Counsel would be authorized to designate, in accordance with standards established in an amended § 14.507(b), certain legal opinions as having precedential effect in Agency adjudications and appellate reviews of benefit claims under laws administered by the VA. The Agency also proposed amendment of § 14.507 to provide that a written legal opinion of the General

Counsel, as defined in a new paragraph (c) of that section, would be conclusive as to all Agency officials and employees with respect to the matter at issue unless designated "advisory only" or superseded by a change in statute or regulation or by a subsequent opinion. Finally, the VA proposed modification of § 3.101, governing adjudications, to recognize the General Counsel's authority to issue precedent opinions. Interested persons were given until April 14, 1988, to submit written comments, suggestions, or objections concerning the proposed regulatory action.

The VA received three comments on the proposed rules, two from congressional sources and one from a veterans' service organization. The comments were in general agreement as to the need to clarify the status and effect of General Counsel opinions and offered several suggestions for changes in the proposed amendments.

Two commenters asserted that the VA is required by the Freedom of Information Act, 5 U.S.C. 552, to publish all precedent opinions of the General Counsel in the **Federal Register.** Section 522(a)(1)(D) of Title 5, United States Code, provides for publication in the **Federal Register,** for the guidance of the public, of "interpretations of general applicability formulated and adopted by the agency." Under the terms of section 552(a)(1), a person may not be required to resort to or be adversely affected by matter required to be published in the **Federal Register** and not so published, except to the extent the person has actual and timely notice of its contents.

The VA concludes that opinions designated as precedential pursuant to new 38 CFR 14.507(b) will fall within the scope of 5 U.S.C. 552(a)(1) and be subject to its terms concerning publication and actual notice. New 38 CFR 14.507(b) has thus been modified to recognize the applicability of 5 U.S.C. 552(a)(1) to opinions designated as "precedent opinions" pursuant to that regulation, and such opinions will be treated by the Agency in accordance with the referenced statute.

Another commenter asserted that the Freedom of Information Act requires maintenance by the VA of an index of General Counsel opinions. This commenter expressed the view that such an index should include all opinions of the General Counsel and the VA District Counsels, regardless of precedential effect, and all past, as well as future, opinions. This commenter also suggested that the index be made available for sale and be made available for inspection at all VA stations.

Section 552(a)(2) of Title 5, United States Code, provides for indexing of "interpretations which have been adopted by the agency and are not published in the **Federal Register.**" Interpretations within the scope of section 552(a)(2) may be relied on or used by an agency against an individual only if the interpretation has been duly indexed and made available or published or the individual has actual and timely notice of its terms. The VA concludes that written legal opinions of the General Counsel which are conclusive as to all Agency officials and employees pursuant to new 38 CFR 14.507(a) and which are not published in the **Federal Register** will fall within the scope of 5 U.S.C. 552(a)(2) and be subject to its terms concerning indexing and actual notice. New 38 CFR 14.507(a) has thus been modified to recognize the applicability of 5 U.S.C. 552(a)(2) to opinions to be accorded conclusive effect pursuant to that regulation, and such opinions will be treated by the Agency in accordance with the referenced statute. The index to be maintained pursuant to 5 U.S.C. 552(a)(2) will be made available to the public in accordance with applicable legal requirements.

The VA does not consider legal opinions which are advisory only to be interpretations adopted by the Agency within the meaning of 5 U.S.C. 552 (a)(1)(D) or (a)(2)(B) and thus does not consider them subject to the publication requirements of section 552(a)(1) or the indexing provisions of section 552(a)(2). Opinions issued by the VA District Counsels, since not accorded conclusive effect under 38 CFR 14.507(a), are considered advisory only and not subject to 5 U.S.C. 552 (a)(1) or (a)(2). Further, because VA statutes and regulations did not previously give precedential or conclusive effect to General Counsel opinions not adopted or approved by the Administrator of Veterans Affairs, the VA does not consider General Counsel opinions issued prior to promulgation of new 38 CFR 14.507 and not adopted or approved by the Administrator to be subject to section 552 (a)(1) or (a)(2) requirements.

The Administrator of Veterans Affairs has long since discontinued the practices of approving and adopting as Administrator's Decisions legal opinions prepared by the General Counsel and of issuing "instructions" for the implementation of statutes. Although such documents are largely of historical interest at this time, Board of Veterans Appeals regulations continue to contain a provision binding the Board to follow decisions and instructions of the Administrator in its consideration of appeals. A similar antiquated reference to Administrator's Decisions and opinions approved by the Administrator and to defined policies as enunciated by the Administrator also appears in Agency adjudication regulations. In order to update the regulations and simplify the classification system for legal opinions, the Agency is amending 38 CFR 3.101 and 19.103 to delete reference to Administrator's Decisions, opinions approved by the Administrator, and instructions and enunciated policies of the Administrator. Pursuant to this change, such decisions, opinions, instructions, and policy statements will be without precedential or conclusive effect in future Agency adjudications.

It is not the VA's intention through these amendments to effect a change in legal principles currently governing claim adjudication. The VA believes that generally legal principles enunciated in Administrator's Decisions affecting benefits have long since been adopted in regulations or are no longer applicable due to amendment or repeal of the statutory provisions to which they pertained. Should a claim arise in which an Administrator's Decision would have been dispositive of a legal issue but for these regulatory amendments, the Agency intends to apply the legal interpretation enunciated in such decision. Accordingly, the General Counsel may, on a case-by-case basis, reissue, under the terms of new § 14.507, opinions formerly adopted as Administrator's Decisions. Any opinion so reissued will have the same effect as a written legal opinion newly issued under that section.

One commenter expressed the view that the proposed amendments would perpetuate what it perceives as a confusing variety of opinions on legal issues. The VA feels that the amendments will reduce any potential for confusion by establishing three classes of opinions involving benefits, i.e., precedent opinions, conclusive opinions without precedential effect, and opinions which are advisory only. However, for purposes of consistency, in order to further clarify the application of the regulations, and to eliminate use of terms such as "adjudication" and "appellate review", which were apparently considered confusing by this commenter, the VA has modified new 38 CFR 2.6(e)(9) and 14.507 to better define the types of opinions to which these sections apply.

Under these provisions as modified, the General Counsel may designate as precedential and give binding effect to a written legal opinion "involving

veterans' benefits under laws administered by the Veterans Administration." This terminology is intended to parallel the jurisdiction of the Board of Veterans Appeals as defined in 38 CFR 19.1 through 19.3. Thus, the term is intended to include not only claims for monetary benefits but also waiver claims and other administrative debt collection matters, determinations of eligibility for a variety of services, devices and equipment, and other matters relating to benefits. In keeping with legislative development of statutes relating to judicial review of VA decisions and attorney fees for representation in benefit matters, the word "claim" has been deleted from the regulations to further clarify that matters other than affirmative claims for benefits are included within the scope of the regulation. The term "veterans' benefits" is intended to include benefits provided to veterans, their dependents, and their surviviors. Also, to improve clarity and more specifically define its scope, revised 38 CFR 14.507 has been modified to limit the authority granted therein to the General Counsel and the Deputy General Counsel acting as or for the General Counsel.

One commenter expressed the view that any opinion meeting the criteria set forth in proposed 38 CFR 14.507(b) should be designated as precedential and the General Counsel should not have discretion in making the designation. However, the VA believes there are likely to be situations where designation of an opinion as precedential may not be desirable even though it meets the criteria provided in the regulation. Such situations may arise, for example, where an opinion involves a rapidly developing area of the law or when a major judicial opinion on a issue is expected in the foreseeable future. The VA therefore concludes that the General Counsel should retain discretion as to which opinions meeting the criteria of § 14.507 should be designated precedent opinions.

One commenter, noting that under proposed 38 CFR 14.507(a) advice, recommendations, or conclusions on matters of Government or Agency policy contained within an otherwise conculsive written legal opinion shall not be considered binding on Agency officials, suggested that format for opinions be employed to differentiate which portions of an opinion are deemed binding. The critical distinction in assessing the conclusive effect of statements in a written legal opinion is whether the statements address policy matters or interpret the law. The VA feels that in most cases this distinction will be readily apparent from the text of the opinion. In those rare instances where questions may arise, the General Counsel may provide clarification upon request.

Section 14.507(b) of the proposed rules provided that all precedent opinions would be entered in the Office of the General Counsel's computer data base. One commenter suggested that the VA clarify its policy regarding public access to this computer data base. Another commenter pointed out the difficulty service organization representatives and members of the public may have in accessing and using this data base and urged that adequate means be employed to make General Counsel opinions available to the public.

The VA believes that recognition of the applicability of 5 U.S.C. 552(a) (1) and (2) to particular classes of General Counsel opinions imposes on the Agency an obligation to make such opinions available to the public accordance with the statutory terms. Difficulties with public access to the Agency's current computer system have been noted. Given the changing nature of the VA's information management capabilities, the Agency considers it prudent at this time to maintain flexibility as to the means by which the public availability requirements of the Freedom of Information Act will be addressed. Accordingly, while the VA maintains its commitment to public availability of opinions in accordance with law, references to public availability and to the General Counsel's computer data base have been deleted from new 38 CFR 14.507(b).

The VA notes that, in adopting this regulation, it does not intend to waive its authority under applicable law to withhold from public disclosure particular opinions designated as "advisory only" pursuant to new 38 CFR 14.507. The VA does intend, however, to make such opinions available to the public to the fullest extent compatible with the General Counsel's responsibility as legal counsel to the Agency.

Finally, one commenter contended that due process requires a claimant be provided a copy of a legal opinion affecting his or her claim and an opportunity to rebut that opinion prior to the Agency's reliance on the opinion in determination of the claim. This commenter also contended that the claimant should be given notice when a request for opinion is made and should be informed of those portions of the opinion upon which the decisionmaker relies.

To the extent that this comment suggests the existence of a right on the part of a claimant to participate in the development of a legal opinion affecting his or her claim, the commenter cited no authority for this proposition, and the VA is aware of none. Such participation would be inappropriate in light of the Agency's special expertise in interpreting its own statutes and regulations. Further, since decisionmakers would not be free to disregard conclusive opinions issued pursuant to 38 CFR 14.507(a), the correctness of such an interpretation would not be an issue at a hearing on the subject claim and the extent of reliance by the decisionmaker would not be in doubt. Apart from due process considerations, however, the VA plans to review its procedures to assure adequate notice of controlling General Counsel opinions to assist claimants in the appeal and judicial-review processes.

In light of the foregoing, the subject regulatory proposal is amended as noted above, and the rules as so amended are adopted as final rules as set forth below.

The Administrator hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these regulatory amendments are therefore exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604. The reason for this certification is that regulatory amendments will have only a limited, beneficial effect on claimants and their representatives.

These regulatory amendments have been reviewed under E.O. 12291 and have been determined to be non-major because they will not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies, or geographic regions.

There are no Catalog of Federal Domestic Assistance numbers associated with these regulatory amendments.

List of Subjects

38 CFR Part 2

Authority delegations.

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

38 CFR Part 14

Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions, Reporting and recordkeeping requirements. Surety bonds, Trusts and trustees, Veterans.

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: January 5, 1989.

Thomas K. Turnage,

Administrator.

38 CFR Parts, 2, 3, 14, and 19 are amended as follows:

PART 2—[AMENDED]

1. In 38 CFR Part 2, Delegations of Authority, § 2.6, paragraph (e)(9) is redesignated as paragraph (e)(10); paragraph (e)(10) is redesignated as (e)(11); and a new paragraph (e)(9) is added to read as follows:

§ 2.6 Administrator's delegations of authority to certain officials (38 U.S.C. 212(a)).

* * * * *

(e) *General Counsel.*

* * * * *

(9) The General Counsel, or the Deputy General Counsel acting as or for the General Counsel, is authorized to designate, in accordance with established standards, those legal opinions of the General Counsel which will be considered precedent opinions involving veterans' benefits under laws administered by the Veterans' Administration.

(Authority: 38 U.S.C. 210, 212)

* * * * *

PART 3—[AMENDED]

2. In 38 CFR Part 3, Adjudication, § 3.101 is revised to read as follows:

§ 3.101 Decisions to conform.

All decisions will conform to the statutes and regulations of the Veterans Administration and to the precedent opinions of the General Counsel. Unless designated as precedent opinions under § 14.507(b) of this chapter, legal opinions in individual cases will not be required to be followed as precedents in subsequent cases.

(Authority: 38 U.S.C. 210)

PART 14—[AMENDED]

3. In 38 CFR Part 14, Legal Services, General Counsel, § 14.507 is revised to read as follows:

§ 14.507 Opinions.

(a) A written legal opinion of the General Counsel involving veterans' benefits under laws administered by the Veterans Administration shall be conclusive as to all Agency officials and employees with respect to the matter at issue, unless there is a change in controlling statute or regulation, a superseding written legal opinion by the General Counsel, or the designation on its face as "advisory only" by the General Counsel or the Deputy General Counsel acting as or for the General Counsel. Written legal opinions having conclusive effect under this section and not designated as precedent opinions pursuant to paragraph (b) of this section shall be considered by the Veterans Administration to be subject to the provisions of 5 U.S.C. 552(a)(2). Advice, recommendations, or conclusions on matters of Government or Agency policy, contained within a written legal opinion, shall not be binding on Agency officials and employees merely because of their being contained within a written legal opinion. Written legal opinions will be maintained in the Office of the General Counsel. Written legal opinions involving veterans' benefits under laws administered by the Veterans Administration, which pertain to a particular benefit matter, in addition to being maintained in the Office of the General Counsel, will be filed in the individual claim folder.

(b) A written legal opinion of the General Counsel involving veterans' benefits under laws administered by the Veterans Administration which, in the judgment of the General Counsel or the Deputy General Counsel acting as or for the General Counsel, necessitates regulatory change, interprets a statute or regulation as a matter of first impression, clarifies or modifies a prior opinion, or is otherwise of significance beyond the matter at issue, may be designated a "precedent opinion" for purposes of such benefits. Written legal opinions designated as precedent opinions under this section shall be considered by Veterans Administration to be subject to the provisions of 5 U.S.C. 552(a)(1).

(c) For purposes of this section, the term "written legal opinion of the General Counsel" means a typed or printed memorandum or letter signed by the General Counsel or by the Deputy General Counsel acting as or for the General Counsel, addressed to an official or officials of the Veterans Administration, stating a conclusion on a legal issue pertaining to Veterans Administration activities.

(Authority: 38 U.S.C. 210)

PART 19—[AMENDED]

4. In 38 CFR Part 19, Board of Veterans Appeals, § 19.103, paragraph (a) is revised to read as follows:

§ 19.103 Rule 3; Governing criteria.

(a) *General.* In the consideration of appeals, the Board shall be bound by the laws and regulations of the Veterans Administration and precedent opinions of the General Counsel.

(Authority: 38 U.S.C. 4004(c))

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38 CFR Part 14

Indemnification of Veterans Administration Employees

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: Existing Veterans Administration (VA) policy does not provide for the use of Agency funds to indemnify employees who suffer adverse money judgments or personal damage claims as a result of official acts. This amendment to VA regulations parallels recently-adopted Department of Justice regulations in permitting indemnification in appropriate situations as determined by the Administrator or designee. The amendment also provides that VA attorneys participating in VA determinations whether to recommend Department of Justice representation in the above matters, and who assist in any authorized representation, have an attorney-client relationship with the employee with respect to the attorney-client privilege. The amendment will affect the VA's operations by significantly reducing the reluctance of VA employees to take decisive action for fear of reprisal resulting in lawsuits. This enhances the overall efficiency of the VA.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Audley Hendricks, Assistant General Counsel (Q23), Office of the General Counsel, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-3671.

SUPPLEMENTARY INFORMATION: The Comptroller General has issued opinions stating that Federal agencies may both assume liability for settlement and use appropriated funds to pay reasonable costs of legal representation in such cases. *See* 67 Comp. Gen No. B-229052 (October 28, 1987); Unpub. C.G. Decision